

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,  
HAREBRAINED HOLDINGS, INC.,  
JORDAN WEISMAN, PIRANHA GAMES  
INC., IMMEDIARES PRODUCTIONS,  
LLC, and DOES 1–10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**DECLARATION OF JESSICA  
STEBBINS BINA IN SUPPORT OF  
MOTION FOR LEAVE TO AMEND  
AMENDED COMPLAINT**

**NOTE ON MOTION CALENDAR:  
DECEMBER 8, 2017**

I, Jessica Stebbins Bina, declare as follows:

1. I am an attorney at Latham & Watkins LLP, attorneys for Plaintiff Harmony Gold U.S.A., Inc. (“Harmony Gold”), over eighteen years of age, and am competent to testify herein.

I make the following statements based on my personal knowledge.

2. I have recently become counsel of record for Harmony Gold in this matter. Very limited discovery has been conducted in the case to date. There has been only a single round of written discovery and the exchange of a few hundred pages of documents, and no depositions. It

1 is my understanding that, prior to my entry into the case, the parties had engaged in settlement  
2 discussions which included, for the past several months, an informal stay of discovery.

3 3. In May 2017, I represented Harmony Gold in a private arbitration against its  
4 licensor, Tatsunoko Production Co., Ltd. (“Tatsunoko”). The arbitration was unrelated to the  
5 instant litigation. The arbitration was confidential, but Harmony Gold thereafter sought  
6 confirmation of the award in the Central District of California, as Tatsunoko stated it would only  
7 pay the awarded attorneys’ fees if the award were judicially confirmed.

8 4. It is my understanding that in or around September 2017, counsel for defendant  
9 Piranha Games, Inc. (“Piranha”) approached then-counsel for Harmony Gold, and stated that it  
10 believed, based on an out-of-context sentence in the Harmony Gold/Tatsunoko arbitration award,  
11 that Harmony Gold lacked standing to assert its copyright infringement claims against Piranha.  
12 Harmony Gold’s counsel immediately disputed this claim, explaining that the arbitration did not  
13 address the issues claimed by Piranha and that Harmony Gold had a valid, binding exclusive  
14 license agreement from Tatsunoko.

15 5. On October 2, 2017, counsel for Piranha had a call with counsel for Harmony  
16 Gold to discuss these matters. I participated in this call to provide factual background relating to  
17 the arbitration. During this call, Harmony Gold’s then-counsel stated that he believed Harmony  
18 Gold had inadvertently misstated some facts in its recitation of the 33-year history in its initial  
19 complaint, and that he would likely amend the complaint to address this and clarify the source  
20 and scope of Harmony Gold’s rights.

21 6. Harmony Gold’s counsel did not immediately amend the complaint, however, as  
22 the parties continued to discuss the matter. On October 18, 2017, Harmony Gold changed  
23 counsel in this matter to myself, and I formally substituted in as counsel of record on October 31,  
24 2017, after obtaining a stipulation and order from all parties and the Court. (Dkt. 46.)  
25

1           7.       Shortly thereafter, I reached out to Piranha's counsel to continue the discussion  
2 regarding Piranha's mistaken understanding of the Harmony Gold/Tatsunoko arbitration award.  
3 After an initial call on or about November 6, 2017, on November 8, 2017, Piranha's counsel  
4 informed me that Piranha intended to immediately move for summary judgment on its theory  
5 that Harmony Gold lacked standing. I again disputed Piranha's claims and reiterated Harmony  
6 Gold's intention to promptly amend the complaint to more fully address the parties' history.  
7 Nonetheless—and apparently in an attempt to beat Harmony Gold to the punch—Piranha filed a  
8 motion for summary judgment on November 13, 2017. (Dkt. 47.)

9           8.       On November 21, 2017, Harmony Gold circulated a proposed amended complaint  
10 to defendants' counsel, asking whether counsel would stipulate to the proposed amendment. As  
11 the amendment addresses only Harmony Gold's history, and does not seek in any way to expand  
12 the scope of defendants' liability or otherwise prejudice defendants' defense in this matter,  
13 Harmony Gold anticipated a courteous response. Instead, Piranha's counsel responded: "Before  
14 deciding on whether we will oppose the motion to amend the complaint a second time, could you  
15 please tell us whether you will be consenting to Piranha's motion for summary judgment?"

16           9.       I asked defendants again on the evening of November 21 and the morning of  
17 November 22 if they would consent to amendment. Counsel for both Piranha and Harebrained  
18 Schemes confirmed on November 22, 2017, that they intended to oppose amendment.

19           10.      Attached as Exhibit A is a true and correct copy of the email exchange between  
20 myself and defendants' counsel, including the foregoing communications.

21           11.      Attached as Exhibit B is a true and correct copy of the email exchange between  
22 myself and defendants' counsel of the foregoing communications, with the addition of the  
23 response from counsel for Piranha.  
24  
25

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Signed this 22nd day of November, 2017, at Los Angeles, California.

4  
5 By: s/ Jessica Stebbins Bina  
6 Jessica Stebbins Bina  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 22, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

DATED this 22nd day of November, 2017.

s/ Erica Knerr

Erica Knerr

## **EXHIBIT A**

**Stebbins Bina, Jessica (CC)**

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**From:** Rheume, Warren <WarrenRheume@dwt.com>  
**Sent:** Wednesday, November 22, 2017 10:38 AM  
**To:** Stebbins Bina, Jessica (CC)  
**Cc:** Meiklejohn.Paul@dorsey.com; meyer.ryan@dorsey.com; fairchild.todd@dorsey.com; Corning, James; JMK@pattishall.com; BAA@pattishall.com; damone@calfoeakes.com; Greenman, Elizabeth (CC)  
**Subject:** Re: Harmony Gold v. Piranha et al

Jessica, your understanding is correct. I will call you later today.

Best.

**Warren J. Rheume** | Davis Wright Tremaine LLP

[1201 Third Avenue, Suite 2200 | Seattle, WA 98101](#)

Tel: [\(206\) 757-8265](#) | Mobile: [\(206\) 235-7801](#) | Fax: [\(206\) 757-7265](#)

Email: [warrenrheume@dwt.com](mailto:warrenrheume@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

On Nov 22, 2017, at 10:18 AM, "[Jessica.StebbinsBina@lw.com](mailto:Jessica.StebbinsBina@lw.com)" <[Jessica.StebbinsBina@lw.com](mailto:Jessica.StebbinsBina@lw.com)> wrote:

Counsel,

Based on your email last night, and as we have not heard further from you, we understand you will not stipulate to amendment. If that is not the case, please let us know immediately as we intend to file our motion this afternoon.

Best regards,

**Jessica Stebbins Bina**

**LATHAM & WATKINS LLP**

10250 Constellation Blvd., 3rd Floor

Los Angeles, CA 90067

Direct Dial: +1.424.653.5525

Fax: +1.424.653.5501

Email: [jessica.stebbinsbina@lw.com](mailto:jessica.stebbinsbina@lw.com)

<http://www.lw.com>

---

**From:** Stebbins Bina, Jessica (CC)

**Sent:** Tuesday, November 21, 2017 9:43 PM

**To:** [Meiklejohn.Paul@dorsey.com](mailto:Meiklejohn.Paul@dorsey.com)

**Cc:** [meyer.ryan@dorsey.com](mailto:meyer.ryan@dorsey.com); [fairchild.todd@dorsey.com](mailto:fairchild.todd@dorsey.com); [jamescorning@dwt.com](mailto:jamescorning@dwt.com); [warrenrheume@dwt.com](mailto:warrenrheume@dwt.com); [JMK@pattishall.com](mailto:JMK@pattishall.com); [BAA@pattishall.com](mailto:BAA@pattishall.com); [damone@calfoeakes.com](mailto:damone@calfoeakes.com);

Greenman, Elizabeth (CC)

**Subject:** Re: Harmony Gold v. Piranha et al

Of course not. As we have repeatedly explained, we thoroughly disagree with your position and indeed to proceed with our case. Please let us know if you will stipulate to amendment promptly as we intend to file tomorrow.

Best regards,

Jessica Stebbins Bina  
LATHAM & WATKINS LLP  
10250 Constellation Blvd. Suite 1100  
Los Angeles, CA 90067  
Direct Dial: +1.424.653.5525  
Fax: +1.424.653.5501  
Email: [jessica.stebbinsbina@lw.com](mailto:jessica.stebbinsbina@lw.com)  
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**From:** [Meiklejohn.Paul@dorsey.com](mailto:Meiklejohn.Paul@dorsey.com)  
**Sent:** Nov 21, 2017 7:07 PM  
**To:** "Stebbins Bina, Jessica (CC)" <[Jessica.StebbinsBina@lw.com](mailto:Jessica.StebbinsBina@lw.com)>  
**Cc:** [meyer.ryan@dorsey.com](mailto:meyer.ryan@dorsey.com); [fairchild.todd@dorsey.com](mailto:fairchild.todd@dorsey.com); [jamescorning@dwt.com](mailto:jamescorning@dwt.com); [warrenrheume@dwt.com](mailto:warrenrheume@dwt.com); [JMK@pattishall.com](mailto:JMK@pattishall.com); [BAA@pattishall.com](mailto:BAA@pattishall.com); [damone@calfoeakes.com](mailto:damone@calfoeakes.com); "Greenman, Elizabeth (CC)" <[Elizabeth.Greenman@lw.com](mailto:Elizabeth.Greenman@lw.com)>  
**Subject:** Re: Harmony Gold v. Piranha et al

Hi Jessica,

Before deciding on whether we will oppose the motion to amend the complaint a second time, could you please tell us whether you will be consenting to Piranha's motion for summary judgment?

Paul

Sent from my iPhone

On Nov 21, 2017, at 10:31 AM, "[Jessica.StebbinsBina@lw.com](mailto:Jessica.StebbinsBina@lw.com)" <[Jessica.StebbinsBina@lw.com](mailto:Jessica.StebbinsBina@lw.com)> wrote:

All,

As previously discussed with Piranha prior to my entry into this case and again approximately two weeks ago, Harmony Gold intends to amend the complaint to more thoroughly state some of the pertinent history relating to its rights in and to the Robotech warrior robots. Attached please find a proposed amended complaint, in clean and redline from the current complaint. As we are well in advance of the deadline to amend, please let me know promptly if defendants will stipulate to the entry of the same.

Please don't hesitate to reach out with any questions or concerns. We anticipate that in the absence of a stipulation, we will need to move to amend promptly, and potentially as soon as tomorrow, given Piranha's decision to file for summary judgment on the existing complaint after being informed of our intention to



amend.

Best regards,

Jessica Stebbins Bina

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Latham & Watkins LLP

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## **EXHIBIT B**

**Stebbins Bina, Jessica (CC)**

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**From:** Meiklejohn.Paul@dorsey.com  
**Sent:** Wednesday, November 22, 2017 10:53 AM  
**To:** Stebbins Bina, Jessica (CC)  
**Cc:** meyer.ryan@dorsey.com; fairchild.todd@dorsey.com; jamescorning@dwt.com; warrenrheaume@dwt.com; JMK@pattishall.com; BAA@pattishall.com; damone@calfoeakes.com; Greenman, Elizabeth (CC)  
**Subject:** RE: Harmony Gold v. Piranha et al

Hi Jessica,

Piranha will not stipulate to amendment.

Paul

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**From:** Jessica.StebbinsBina@lw.com [mailto:Jessica.StebbinsBina@lw.com]  
**Sent:** Wednesday, November 22, 2017 10:18 AM  
**To:** Meiklejohn, Paul <Meiklejohn.Paul@dorsey.com>  
**Cc:** Meyer, Ryan <meyer.ryan@dorsey.com>; Fairchild, Todd <fairchild.todd@dorsey.com>; jamescorning@dwt.com; warrenrheaume@dwt.com; JMK@pattishall.com; BAA@pattishall.com; damone@calfoeakes.com; Elizabeth.Greenman@lw.com  
**Subject:** RE: Harmony Gold v. Piranha et al

Counsel,

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Best regards,

**Jessica Stebbins Bina**

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